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1 RIMAC & MARTIN  
 2 a Professional Corporation  
 3 JOSEPH M. RIMAC, ESQ. - SBN 72381  
 4 WILLIAM REILLY, ESQ. - SBN 177550  
 5 1051 Divisadero Street  
 6 San Francisco, California 94115  
 7 Telephone: (415) 561-8440

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CLERK U.S. DISTRICT COURT  
 CENTRAL DIST. OF CALIF.  
 LOS ANGELES

BY \_\_\_\_\_

8 MOUND, COTTON, WOLLAN & GREENGRASS  
 9 Counselors at Law  
 10 JOSEPH M. RIMAC - State Bar No. 72381  
 11 ANNA M. MARTIN - State Bar No. 154279  
 12 1051 Divisadero Street  
 13 San Francisco, California 94115  
 14 Telephone: (415) 561-8440  
 15 Facsimile (415) 434-4303

16 Attorneys for Plaintiff  
 17 ARCH SPECIALTY INSURANCE COMPANY

18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA

20 ARCH SPECIALTY INSURANCE  
 21 COMPANY,

Case No:

CV10 4284

MMMV BKX

Plaintiff,

COMPLAINT

vs.

PALM CANYON TOWNHOMES, LLC.,  
 22 Defendant.

23 Plaintiff, Arch Specialty Insurance Company ("Arch"), by its undersigned counsel, for its  
 24 complaint against defendant, Palm Canyon Townhomes, LLC ("Palm Canyon"), alleges as  
 follows:

NATURE OF THE ACTION

25  
 26 1. This action seeks damages against defendant, Palm Canyon for breach of its  
 27 obligations under the Commercial General Liability insurance policy ("the Policy") issued by

1 plaintiff, Arch. Pursuant to the terms of the Policy, the premium paid by Palm Canyon was a  
2 deposit premium subject to imposition of an additional premium after conduct of an audit.  
3 Pursuant to such audit, it was determined that an additional premium was owed to Arch in the  
4 sum of \$186,300 which defendant has failed to pay. As a result of defendant's wrongful actions,  
5 Arch has suffered damages and has commenced this action to recover the additional premium  
6 owed pursuant to the plain language of the Policy.

7

8 **JURISDICTION AND VENUE**

9

10 2. This Court possesses original subject matter jurisdiction pursuant to 28 U.S.C. §  
11 1332(a)(1) inasmuch as there is diversity of citizenship between plaintiff and defendant and the  
12 amount in controversy exceeds \$75,000, exclusive of interest and costs.

13 3. Venue is properly placed in the Central District of California pursuant to 28  
14 U.S.C. § 1391 inasmuch as Palm Canyon resides in this district.

15

16 **PARTIES**

17 4. Arch is an insurance company incorporated under the laws of the State of  
18 Nebraska, with its principal place of business at One Liberty Plaza, 53<sup>rd</sup> Floor, New York, New  
19 York.

20 5. Upon information and belief, Palm Canyon is a limited liability company  
21 organized under the laws of the State of California, with its principal place of business at 11828  
22 LaGrange Avenue, Suite 200, Los Angeles, California. Upon information and belief, all  
23 members of Palm Canyon are citizens of the State of California.

24

25 **THE INSURED**

26 6. Upon information and belief, Palm Canyon is, and at all relevant times was, in the  
27 business of providing construction services.

7. Upon information and belief, Palm Canyon purchased the plot of land located at 2801 South Palm Canyon, Palm Springs, California. Palm Canyon then constructed Palm Canyon Townhomes, three (3) two story buildings containing ten (10) single family dwellings, and six (6) duplex units.

8. The estimated cost of the construction at the time that the Arch Commercial General Liability Policy incepted was \$3,770,943.

## THE INSURANCE POLICY

9. On or about September 15, 2004, Arch issued policy of insurance No. GAC000149800 to Palm Canyon effective September 15, 2004 to September 15, 2006 (Exhibit A).

10. The Policy was issued through Palm Canyon's insurance broker, Sterling West Insurance Services, Inc. ("Sterling West"), located at 550 N. Brand Blvd, Suite 1990, Glendale, California.

11. The Commercial General Liability Policy had a \$1,000,000 per occurrence limit, a \$1,000,000 personal and advertising injury limit, a \$2,000,000 general aggregate limit, a \$1,000,000 products-completed operations aggregate limit and a \$50,000 deductible.

12. The Policy provided that Palm Canyon was required to pay a \$400,000 deposit premium that was adjustable pursuant to the Premium Computation Endorsement attached to the Policy.

13. The Policy, in Section IV — Commercial General Liability Conditions states, in pertinent part, as follows:

## 5. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.

1                   b. Premium shown in this policy as advance premium is a deposit  
2                   premium only. At the close of each audit period we will compute  
3                   the earned premium for that period and send notice to the first  
4                   Named Insured. The due date for audit and retrospective  
5                   premiums is the date shown as the due date on the bill. . . .

6                  14. The Policy also attaches a Premium Computation Endorsement, Endorsement  
7                  #14, that states:

8                   THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
9                   CAREFULLY.

10                  PREMIUM COMPUTATION ENDORSEMENT — DEDUCTIBLE POLICY  
11                  VERSION

12                  1. The Deposit Premium set forth in the Declarations is adjustable, and is  
13                  only an estimated premium for the Audit Period shown below.

14                  The final earned premium for the Audit Period shall be determined as  
15                  specified in Item **5. Premium Audit of SECTION IV -**  
16                  **COMMERCIAL GENERAL LIABILITY CONDITIONS.** The Audit  
17                  Premium shall be computed by applying the Rate of \$106.07 per each  
18                  \$1,000 of the Premium Base identified in 2 below.

19                  2. The Premium Base shall be identified in (A) and (B) below:

20                  (A) PREMIUM BASE

21                   Other (Describe) Construction Costs

22                   Estimated Exposures \$3,770,943

23                   \* \* \*

24                  3. The Audit Period is measured from the Effective Date of the Insurance  
25                  Policy.

26                  15. The Premium Computation Endorsement thus provides that the Premium Base  
27                  shall be determined by the Construction Costs and states that the Estimated Exposure was  
28                  \$3,770,943.

29                  16. By reason of subsequent endorsements, the term of the Policy was extended to  
30                  April 15, 2007, for which extensions Palm Canyon paid additional premiums totaling  
31                  \$22,000.00.

17. Thus, Palm Canyon paid a deposit premium of \$400,000 and additional premiums totaling \$22,000 for a total of \$422,000.

## THE AUDIT

18. Upon completion of the project, and pursuant to the Policy, an audit was conducted and completed on May 16, 2007 to determine the final earned premium.

19. The auditor found that the actual Total Construction Costs were \$5,527,484.

20. Pursuant to the formula set forth in the Premium Computation Endorsement, the auditor computed the final earned premium at \$608,300, which exceeded the \$422,000 in deposit and additional premiums (see Exhibit B). Accordingly, Palm Canyon is obligated to pay to Arch the difference of \$186,300 pursuant to the terms of the Policy.

**DEFENDANT'S FAILURE TO PAY THE ADDITIONAL EARNED PREMIUM**

21. On July 18, 2007, Arch sent a letter to Sterling West informing it that the audit resulted in additional premium of \$186,300 (Exhibit C).

22. On September 26, 2007, Arch sent a letter to Palm Canyon stating that the account was past due. It requested that the total amount due of \$186,300 be tendered to Arch by October 17, 2007 (Exhibit D).

23. By Premium Invoice dated December 11, 2007, Arch confirmed to Palm Canyon's broker that the additional earned premium in the amount \$186,300 was owed and requested that such amount be paid to Arch by December 26, 2007 (Exhibit E). Palm Canyon failed to pay the balance due to Arch under the terms of the Policy.

24. Although subsequent written demands were made by Arch, Palm Canyon refused to pay the balance due to Arch under the terms of the Policy.

25. To date, the outstanding balance remains unpaid and Palm Canyon has failed to perform its obligation to pay the additional earned premium under the terms of the Policy.

26. Despite Arch's satisfaction of all of its obligations under the Policy, Palm Canyon refuses to fulfill its duty under the contract causing Arch to incur damages in the amount of \$186,300 as well as interests and costs.

**COUNT I**  
**(Breach of Contract)**

27. The preceding paragraphs of this Complaint are incorporated by reference herein.

28. By reason of the foregoing, defendant has breached the Policy, including the Premium Computation Endorsement and Section IV, Item 5 of the Commercial General Liability Conditions.

29. Accordingly, Arch has been damaged in an amount to be determined by this Court, but not less than \$186,300, with interest and costs thereon.

**COUNT II**  
**(Unjust Enrichment)**

30. The preceding paragraphs of this Complaint are incorporated by reference herein.

31. It would be unjust for Palm Canyon to violate the terms of the Policy and not tender to Arch the additional earned premium of \$186,300 that is due to it.

32. By reason of the foregoing, Palm Canyon has been unjustly enriched in the amount to be determined by this Court, but not less than \$186,300 with interests and costs thereon.

## **PRAYER FOR RELIEF**

WHEREFORE, Arch prays that this Court enter judgment against the defendant as follows:

1. On Count I, judgment against defendant in the sum of \$186,300 plus interest;
  2. On Count II, judgment against defendant in the sum of \$186,300 plus interest;
  3. Awarding plaintiff the costs and disbursements of this action; and
  4. Such other and further relief as the Court may deem necessary and proper.

Dated: June 9, 2010

By: /s/ Joseph M. Rimac

Joseph M. Rimac

Attorneys for Plaintiff  
ARCH SPECIALTY INSURANCE COMPANY

## **EXHIBIT A**



ARCH SPECIALTY INSURANCE COMPANY  
A Wisconsin Corporation

Home Office Address:  
300 First Stamford Place, 5th Floor  
Stamford, CT 06902

Administrative Office Address:  
One Liberty Plaza, 53rd Floor  
New York, NY 10006  
(800) 817-3252

C COMMERCIAL GENERAL LIABILITY POLICY DECLARATIONS

POLICY NUMBER: GAC 0001498 00

9/15/04

RENEWAL OF: NEW

EFFECTIVE DATE: 09/15/04

P

AGENT CODE:

EXPIRATION DATE: 09/15/06

4/15/07

12:01 AM STD Time at the Address of the Named Insured

Item 1. Named Insured and Producing Agent

Named Insured: PALM CANYON TOWNHOMES, LLC AND ALL CONTRACTORS AND SUBCONTRACTORS  
IN THE OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

Mailing Address: 11828 LAGRANGE AVENUE  
SUITE 200  
LOS ANGELES, CA 90025

Producing Agent: STERLING WEST INSURANCE SERVICES, INC.

Mailing Address: 550 N. BRAND BLVD.  
SUITE 1890  
GLENDALE, CA 91203

Surplus Line Broker: ROBIN ROBB  
STERLING WEST INSURANCE SERVICES, INC.

Mailing Address: 550 N. BRAND BLVD.  
SUITE 1890  
GLENDALE, CA 91203

Surplus Lines License #: OC97502

Item 2. Named Insured Classified as:

Individual  
 Joint Venture

Partnership  
 LLC

Corporation  
 LLP

Item 3. Limits of Insurance

BODILY INJURY AND PROPERTY DAMAGE LIABILITY -- EACH OCCURRENCE	\$ 1,000,000
PERSONAL AND ADVERTISING INJURY LIMIT -- EACH OFFENSE	\$ 1,000,000
MEDICAL EXPENSE LIMIT -- ANY ONE PERSON	\$ N/A
GENERAL AGGREGATE LIMIT (Other Than Products - Completed Operations)	\$ 2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 1,000,000
DAMAGES TO PREMISES RENTED TO YOU LIMIT -- EACH OCCURRENCE	\$ N/A

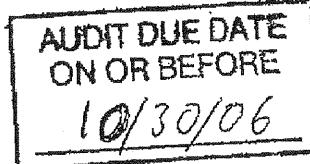
Item 4. Policy Premium: \$ 400,000

Deposit Premium \$ 400,000 which is:  A Flat Charge Per Each Policy Period.

Adjustable at the end of each Audit Period, Per Premium Computation Endorsement

Minimum Retained Audit Premium \$ 400,000

Minimum Retained Premium 35%, not subject to adjustment in the event of cancellation by you.

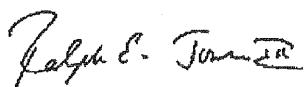




Signature Page

YOUR COMPLETE POLICY CONSISTS OF THE POLICY JACKET WITH THE COVERAGE FORMS, DECLARATIONS, AND ENDORSEMENTS, IF ANY.

IN WITNESS WHEREOF, Arch Specialty Insurance Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the company.



---

Ralph E. Jones III

President



---

Martin J. Nilsen

Secretary

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ARCH SPECIALTY INSURANCE  
COMPANY  
300 First Stamford Place, 5<sup>th</sup> Floor  
Stamford, CT 06902

COMMERCIAL GENERAL LIABILITY

06 CGL0098 00 07 03

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under SECTION II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION V-DEFINITIONS.

#### SECTION I - COVERAGES

##### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

###### 1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our sole discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
  - (2) The "bodily injury" or "property damage" occurs during the policy period.

###### 2. Exclusions

This insurance does not apply to:

###### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

###### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages;

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- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

#### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

#### d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law(s).

#### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and

- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

#### f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;

- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or

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any person or organization for whom you may be legally responsible; or

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily Injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily Injury" or "property damage" arising out of heat,

smoke or fumes from a "hostile fire".

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the Insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and

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- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### i. Mobile Equipment

- "Bodily injury" or "property damage" arising out of:
- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
  - (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### i. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes but is not limited to; civil war, insurrection, usurped power, rebellion or revolution.

#### j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a side-track agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### k. Damage To Your Product

"Property damage" to "your product" arising out of "your product" or any part of "your product".

#### l. Damage To Your Work

"Property damage" to "your work" arising out of "your work" or any part of "your work" and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

Exclusions j. through m. do not apply to damage by fire to premises while rented to

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you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in SECTION III - LIMITS OF INSURANCE.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

If such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Asbestos**

"Bodily injury" or "property damage", including but not limited to, compliance with any action authorized or required by law, which arises out of or would not have occurred, in whole or in part, but for the "asbestos hazard."

As used in this exclusion, "asbestos hazard" means actual, alleged or threatened exposure to asbestos in any manner or form whatsoever, either directly or indirectly, the failure to warn, advise or instruct related to asbestos, the failure to prevent exposure to asbestos, or the presence of asbestos in any place whatsoever, whether or not within a building or structure.

**q. Nuclear Liability**

"Bodily injury" or "property damage"

- (1) with respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be

an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

- (2) resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- (3) under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization; or
- (4) under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
  - (a) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
  - (b) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
  - (c) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

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## As used in this exclusion:

- (1) "Hazardous properties" includes radioactive, toxic or explosive properties.
- (2) Nuclear material" means "source material", "Special nuclear material" or "by-product material".
- (3) "Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".
- (5) "Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".
- (6) "Nuclear facility" means:
  - (a) Any "nuclear reactor";
  - (b) Any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing "spent fuel", or (iii) handling, processing or packaging "waste";
  - (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "Insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations

conducted on such site and all premises used for such operations.

(7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

(8) "Property damage" includes all forms of radioactive contamination of property.

## r. Employment Related Practices

Any "bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, act or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person;
  - (d) Action under Title VII of the 1964 Civil Rights Act and/or any amendments thereto; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of any injury or damage to that person at whom any of the employment-related practices described in Paragraphs (a), (b), (c) or (d) above is directed.

This exclusion applies:

- (1) Whether the insured may be held liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

## s.. Prior Loss

Any "bodily injury" or "property damage", if such injury or damage is a continuation of, or arises out of injury or damage that commenced prior to the inception date of the policy.

## t. Fungi, Mold and Mildew

"Bodily injury" or "Property damage" arising out of fungi, including but not

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limited to, mold or mildew, and any microtoxins, spores, scents, vapors, gases, or byproducts produced or released by fungi, regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that liability, damage, loss, cost, expense or other type of obligation.

#### **u. Lead**

"Bodily injury" or "property damage", including but not limited to, compliance with any action authorized or required by law, which arises out of, in whole or in part, the ingestion, inhalation, absorption or exposure to lead, either directly or indirectly, in any manner or form whatsoever.

### **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

#### **i. Insuring Agreement**

a. We will pay those sums that the Insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in **Section III – Limits Of Insurance**; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments – Coverages A and B**.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

#### **2. Exclusions**

This insurance does not apply to:

##### **a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

##### **b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

##### **c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

##### **d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

##### **e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

##### **f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract.

##### **g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

##### **h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

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**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under Section V – Definitions.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or meta-tag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Fungi, Mold and Mildew**

"Personal and advertising injury" arising out of fungi, including but not limited to,

mold or mildew, and any microtoxins, spores, scents, vapors, gases, or byproducts produced or released by fungi, regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that liability, damage, loss, cost, expense or other type of obligation.

**o. Employment-Related Practices**

"Personal and Advertising Injury" arising out of employment-related practices to:

- (1) A person arising out of any:
  - (a) Refusal to employ;
  - (b) Termination of a person's employment; or
  - (c) Employment-related practices, policies, act or omissions, including but not limited to, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (d) Action under Title VII of the 1964 Civil Rights Act and/or any amendments thereto; or
- (2) any other person as a consequence of any injury or damage to that person at whom any of the employment-related practices described in Paragraphs (a), (b), (c) or (d) above is directed.

This exclusion applies:

- (1) Whether or not the insured may be held liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of any such injury.

**p. Asbestos**

"Personal and advertising injury", including but not limited to, compliance with any action authorized or required by law, which arises out of or would not have occurred, in whole or in part, but for the "asbestos hazard."

As used in this exclusion, "asbestos hazard" means actual, alleged or

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threatened exposure to asbestos in any manner or form whatsoever, either directly or indirectly, the failure to warn, advise or instruct related to asbestos, the failure to prevent exposure to asbestos, or the presence of asbestos in any place whatsoever, whether or not within a building or structure.

#### **g. Lead**

"Personal and advertising injury", including but not limited to, compliance with any action authorized or required by law, which arises out of, in whole or in part, the ingestion, inhalation, absorption or exposure to lead, either directly or indirectly, in any manner or form whatsoever.

### **COVERAGE C MEDICAL PAYMENTS**

#### **1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations; provided that:
    - (a) The accident takes place in the "coverage territory" and during the policy period;
    - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
    - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

#### **2. Exclusions**

We will not pay expenses for "bodily injury":

##### **a. Any Insured**

To any insured, except "volunteer workers".

##### **b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

##### **c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

##### **d. Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

##### **e. Athletics Activities**

To a person injured while taking part in athletics.

##### **f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

##### **g. Coverage A Exclusions**

Excluded under Coverage A.

##### **h. War**

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

##### **i. Clubs**

If you are a club, to any of your members.

##### **j. Medical Expenses**

Arising from or in connection with any medical expenses for services by you, any of your employees or any person or organization under a contract to you to provide such services.

##### **k. Fungi, Mold and Mildew**

Arising out of fungi, including but not limited to, mold or mildew, and any microtoxins, spores, scents, vapors,

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gases, or byproducts produced or released by fungi, regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that liability, damage, loss, cost, expense or other type of obligation.

#### 1. Lead

Arising out of, in whole or in part, the ingestion, inhalation, absorption or exposure to lead, either directly or indirectly, in any manner or form whatsoever.

#### m. Asbestos

Which arises out of or would not have occurred, in whole or in part, but for the "asbestos hazard."

As used in this exclusion, "asbestos hazard" means actual, alleged or threatened exposure to asbestos in any manner or form whatsoever, either directly or indirectly, the failure to warn, advise or instruct related to asbestos, the failure to prevent exposure to asbestos, or the presence of asbestos in any place whatsoever, whether or not within a building or structure.

#### n. Pollution

Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

#### SUPPLEMENTARY PAYMENTS – COVERAGE A AND B

##### 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

#### SECTION II – WHO IS AN INSURED

##### 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

##### 2. Each of the following is also an insured:

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- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
    - (1) "Bodily injury" or "personal and advertising injury":
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by,
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an

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offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraphs 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to

you or temporarily occupied by you with permission of the owner.

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance apply to the policy period set forth in the Declarations or any endorsements thereto.

### SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

#### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

Notice of an "occurrence" or an offense is not notice of a claim.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

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- (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### **3. Legal Action Against Us**

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
  - b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### **4. Other Insurance**

This insurance is excess over any other valid and collectible insurance that applies to any claim or "suit" to which this insurance applies, whether such other insurance is written on a primary, excess, contingent or on any other basis (except if that other insurance is specifically written to apply excess of this insurance), and this insurance will not contribute with any other such insurance.

## 5. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
  - b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will

compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 6. Representations

**By accepting this policy, you agree:**

- a. The statements in the Declarations are accurate and complete;
  - b. Those statements are based upon representations you made to us; and
  - c. We have issued this policy in reliance upon your representations.

## **7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
  - b. Separately to each insured against whom claim is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the Insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair our rights. At our request, the Insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew**

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## 10. Cancellation

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- a. The First Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the First Named Insured's last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the First Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### 11. Changes

This policy contains all agreements between you and us concerning the insurance afforded. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

#### 12. Inspection

We shall be permitted but not obligated to inspect, sample and monitor on a continuing basis the insured's property or operations, at any time. Neither our right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the insured or others, or determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation.

#### 13. Named Insureds

- a. The First Named Insured is authorized to act on behalf of all persons or organizations insured under this policy with respect to all matters pertaining to the insurance afforded by the policy.
- b. Each Named Insured is jointly and severally liable for:
  - (1) All premiums due under this policy; and
  - (2) All obligations that arise due to the self-insured retention including claim expenses
  - (3) Any other financial obligations of the Named Insured to us arising out of any agreements contained in this policy.

#### 14. Transfer of Your Rights and Duties under this policy

Your rights and duties under this policy may not be transferred without our written consent, except in the case of death to an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

#### SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in Paragraph a. above;

(2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

a. A written contract for a lease of premises. However, that portion of the written contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A written sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. A written elevator maintenance agreement;

f. That part of any other written contract or written agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any written contract or written agreement.

Paragraph f. does not include that part of any written contract or written agreement:

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change

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orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above or supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraphs a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraphs a., b., c. or d., above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or

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premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication of material, in any manner, that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

All "personal and advertising injury" arising out of the same or similar material, regardless of the mode in which such material is communicated, including but not limited to publication by means of Internet, extra-net, email or website, will be considered as arising solely out of one offense.

**15. "Pollutants"** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**16. "Products-completed operations hazard"** means:

- a. All "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another

contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. This does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

**17. "Property damage"** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**18. "Suit"** means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

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SC 06-2005

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
21. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
22. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and

## **SCHEDULE OF FORMS AND ENDORSEMENTS**

**NAMED INSURED: PALM CANYON TOWNHOMES, LLC AND ALL  
CONTRACTORS AND SUBCONTRACTORS IN THE OWNER  
CONTROLLED INSURANCE PROGRAM (OCIP)**  
**POLICY NUMBER: GAC 0001498 00**

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

40-35-35-2005

SERVICE OF SUIT

It is agreed that in the event of the failure of this Company to pay any amount claimed to be due hereunder, this Company, at the request of the Insured, will submit to the jurisdiction of any Court of Competent Jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon the highest one in authority bearing the title "Commissioner", "Director" or "Superintendent" of Insurance of the state or commonwealth wherein the property covered by this policy is located, and that in any suit instituted against it upon this contract this Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal. The one in authority bearing the title "Commissioner", "Director" or "Superintendent" of Insurance of the state or commonwealth wherein the property covered by this policy is located is hereby authorized and directed to accept service of process on behalf of this Company in any such suit and/or upon the Insured's request to give a written undertaking to the Insured that they will enter a general appearance upon this Company's behalf in the event such a suit shall be instituted.

All other terms and conditions of this policy remain unchanged.

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: 72GAC14B0700

Named Insured:

Endorsement Effective Date:

02 ML 0003 00 08 02

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SC 07-125, 2005

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**LIMITED BLANKET ADDITIONAL INSURED ENDORSEMENT  
DEDUCTIBLE VERSION  
(NOT INCLUDING PRODUCTS-COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**SECTION II ~ WHO IS AN INSURED** is amended to include as an additional insured those persons or organizations who are required under a written contract with the Named Insured to be named as an additional insured, but only with respect to liability arising out of your ongoing operations.

As used in this endorsement, the word "your" refers to the Named Insured.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 1

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

07/06/2005 10:34 AM 21997\_6059

SC 67-156-2565

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CHROMATED COPPER ARSENATE ("CCA") EXCLUSION**

This Insurance does not apply to and we will not have the duty to investigate or defend any suit brought against you, or pay any costs or expenses of such investigation and defense for liability, claims, damage or loss arising out of any product treated with, preserved with, or containing chromated copper arsenate ("CCA").

All other terms and conditions of this Policy remain unchanged.

Endorsement Number:2

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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REC'D. 6/26/05  
C.R.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SILICA EXCLUSION**

This policy does not apply to:

Any claim, "suit," demand or loss that alleges "bodily injury," "property damage," or "personal and advertising injury" (including but not limited to, compliance with any request, demand, order, or statutory or regulatory requirement or any other action authorized or required by law), including any costs, fees, expenses, penalties, judgments, fines, or sanctions arising therefrom, which arises out of, or relates to, in whole or in part, the "silica hazard" or would not have occurred, in whole or in part, but for the "silica hazard".

As used in this exclusion, "silica hazard" means:

- (1) actual, alleged or threatened exposure to "silica" either directly or indirectly, or
- (2) the actual or alleged failure to warn, advise or instruct related to "silica", or
- (3) the actual or alleged failure to prevent exposure to "silica", or
- (4) the actual or alleged presence of "silica" whether or not within a building or structure.

As used in this exclusion, "silica" means any substance, regardless of its form or state, containing silicon, including but not limited to silicon, silica, silicates and silicone.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 3

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CALIFORNIA CIVIL CODE SECTION 895 – 945.5 PROCEEDINGS LIMITATION  
ENDORSEMENT**

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

- 1) The following exclusion is added to **SECTION I COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:**

**Exclusion For California Civil Code Section 895 – 945.5 Proceedings**

Any and all sums paid or incurred in connection with, or arising out of any claim against any insured made pursuant to the procedures described in California Civil Code, Sections 895 through 945.5, except where:

- a. we receive prompt written notice of any such claim that an insured receives pursuant to California Civil Code, Sections 895 through 945.5; and
  - b. such claim is for "property damage" otherwise covered by this policy.
- 2) The following paragraph is added to **SECTION I COVERAGES, SUPPLEMENTARY PAYMENTS-COVERAGE A AND B, subparagraph 1. a.:**

However, we will not pay expenses that are paid or incurred in connection with the procedures described in California Civil Code, Sections 895 through 945.5.

This limitation does not apply if the requirements described in a. and b. of item 1) of this endorsement are met.

- 3) The following statement is added to definition 18., "Suit" (in **SECTION V – DEFINITIONS**):

"Suit" does not include any of the procedures described in the California Civil Code, Sections 895 through 945.5.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 4

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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SC 97-86-2865

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXTERIOR INSULATION AND FINISH SYSTEM EXCLUSION**

This insurance does not apply to and we will not have the duty to investigate or defend any suit brought against you, or pay any costs or expenses of such investigation and defense for liability, claims, damage or loss arising out of:

1. "bodily injury", "property damage", or "personal and advertising injury" caused directly or indirectly, in whole or in part, by the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodeling, service, correction, or replacement, of an "exterior insulation and finish system" or any part thereof, any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, sealants or sealants in connection with such a system; or
2. Any moisture-related or dry rot related "property damage" to a house or other building to which an "exterior insulation and finish system" has been applied, if that "property damage" is caused directly or indirectly, in whole or in part, by the "exterior insulation and finish system";

Regardless of any other cause or event that contributed concurrently or in any sequence to that injury or damage.

For the purposes of this endorsement, an "exterior insulation and finish system" means an exterior cladding or finish system applied to a house or other building, and consisting of:

- a) A rigid or semi-rigid sheathing or insulation board, including gypsum-based, wood-based, or insulation-based materials; and
- b) The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate; and
- c) A reinforcing mesh that is embedded in a base coat applied to the insulation board; and
- d) A finish coat providing surface texture and color.

However, an "exterior insulation and finish system" does not include a cement-based, polymer-enhanced stucco cladding system which:

- a) Incorporates a weather-resistive barrier pursuant to applicable building codes; and
- b) Incorporates ribbed insulation sheathing with ribs aligned vertically to provide drainage; and
- c) The manufacturer of the stucco components has a valid ICBO Evaluation Services Listing in good standing; and
- d) There is no mixing of different manufacturer's products for the stucco system.

So long as that cement-based, enhanced stucco cladding system satisfies all requirements of the applicable model building code and the applicable local building code.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 5

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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SC 97-66-2885

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ENGINEERS, ARCHITECTS OR  
SURVEYORS PROFESSIONAL LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

All other terms and conditions of this policy remain unchanged.

Professional services include:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

Endorsement Number: 6

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

00 CGL0039 00 12 02

Includes Copyright Material from Insurance Services Office  
With Its Permission.

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SC 07-485-2005

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EARTH MOVEMENT OR SUBSIDENCE EXCLUSION**

This insurance does not apply to and we will not have the duty to investigate or defend any suit brought against you, or pay any costs or expenses of such investigation and defense for liability, claims, damage or loss arising out of:

the subsidence, settling, sinking, slipping, falling away, caving in, shifting, eroding, consolidating, compacting, flowing, rising, tilting or any other similar movement of earth or mud, regardless of whether such movement is a naturally occurring phenomena or is man-made.

All other terms and conditions of this policy remain unchanged.

Endorsement Number: 7

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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SC 167-96-21835

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**INTELLECTUAL PROPERTY EXCLUSION**

This insurance does not apply to and we will not have the duty to investigate or defend any suit brought against you, or pay any costs or expenses of such investigation and defense for liability, claims, damage or loss arising out of:

any "bodily injury", "property damage", or "personal and advertising injury" arising out of or directly or indirectly related to the actual or alleged publication or utterance or oral or written statements which are claimed as an infringement, violation or defense of any of the following rights or laws:

1. copyright, other than infringement of copyrighted advertising materials;
2. patent;
3. trade secrets;
4. trade dress; or
5. trade mark or service mark or certification mark or collective mark or trade name, other than trademarked or service marked titles or slogans.

All other terms and conditions of this policy remain unchanged.

Endorsement Number:8

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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SC 57-86-2885

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**RADON CONTAMINATION EXCLUSION**

This insurance does not apply to and we will not have the duty to investigate or defend any suit brought against you, or pay any costs or expenses of such investigation and defense for liability, claims, damage or loss arising out of the presence, ingestion, inhalation or absorption of radon in any form.

All other terms and conditions of this policy remain unchanged.

Endorsement Number:9

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**SUPPLEMENTARY PAYMENTS REDUCE THE LIMITS OF INSURANCE:  
DEDUCTIBLE POLICY ENDORSEMENT**

It is hereby understood and agreed that "SUPPLEMENTARY PAYMENTS – COVERAGES A AND B" within "SECTION I – COVERAGES", is amended as follows:

The provision:

"These payments will not reduce the limits of insurance."

is deleted in its entirety and is replaced with the following provision:

"These payments will reduce the limits of insurance."

It is hereby further understood and agreed that "SECTION III – LIMITS OF INSURANCE" is amended to include the following provision:

All Limits of Insurance are reduced by the payment of those amounts set forth within "SUPPLEMENTARY PAYMENTS – COVERAGES A AND B" within "SECTION I – COVERAGES".

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 10

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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SC-37-106-2635

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**APPLICATION AS WARRANTY CONDITION**

By acceptance of this policy, the Named Insured agrees that the statements in the application attached hereto and made part hereof, are true and correct representations, that each representation shall be deemed material, that this policy and all endorsements issued or to be issued are done so in reliance upon the truth of such representations.

All other terms and conditions of this policy remain unchanged.

Endorsement Number: 11

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

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SC 67-96-2865

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**NAMED INSURED ENDORSEMENT**

It is hereby agreed that Item 1. of the Declarations is amended to include the following entities as a Named Insured:  
PALM CANYON TOWNHOMES, LLC AND ALL CONTRACTORS AND SUBCONTRACTORS IN THE OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

All other terms and conditions of this policy remain unchanged.

Endorsement Number:12

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

00 CGL0072 00 03 03

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107-065-12325  
CSC**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****CONSTRUCTION PROJECT ENDORSEMENT****Project Schedule**

1. Name of Project:	PALM CANYON TOWNHOMES
2. Term of Project:	09/16/04 - 09/15/06
3. Description of Project:	10 SINGLE FAMILY DWELLINGS & 6 DUPLEX UNITS, 3 BUILDINGS, 2 STORIES IN HEIGHT WOOD FRAME CONSTRUCTION
4. Sponsor or Organizer of Project:	SYMPHONY DEVELOPMENT
5. Location of Project:	2801 SOUTH PALM CANYON, PALM SPRINGS, CA

- A. This policy applies only to "bodily injury", "property damage", and "personal and advertising injury" arising out of construction operations at the project shown in the above Project Schedule.
- B. **"SECTION II – WHO IS AN INSURED"** is amended to include only those licensed contractors enrolled in the project shown above by the sponsor or organizer, in writing, prior to any "occurrence" or offense for which coverage is sought under this policy.
- C. Except with respect to the **LIMITS OF INSURANCE**, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:
1. As if each Named Insured were the only Named Insured; and
  2. Separately to each insured against whom claim is made or "suit" is brought.
- D. The following exclusion is added to **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

This insurance does not apply to "property damage" to the project shown above or any part of the project shown above that occurs during the course of construction. The project shown above or part of the project shown above will be deemed to be within the course of construction until it satisfies the definition of "products-completed operations hazard" as defined in this endorsement.

- E. The definition of "products-completed operation hazard" is deleted and replaced by the following:

1. "Products-completed operations hazard" includes all "bodily injury" and "property damage" arising out of "your product" or "your work" except:
  - a. Products that are still in your physical possession; or
  - b. Work that has not yet been completed or abandoned.
2. "Your work" will be deemed completed at the earliest of the following times:
  - a. Completion and acceptance of the entire project shown above by all parties designated in its construction agreement;
  - b. When all of the work to be done at the site where the "bodily injury" or "property damage" occurred has been completed if the project shown above calls for work at more than one site;

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- c. When that part of the work done at the project shown above has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- F. Insurance for "bodily injury" and "property damage" included in the "products – completed operations hazard" is subject to a limited policy period extension as follows:

1. Solely with respect to liability for "bodily injury" or "property damage" included in the "products – completed operations hazard", the insurance provided by this policy is extended for an additional period of time. This coverage extension will commence at the time that "your work" is deemed to be completed, as described in subparagraph E. 2. of this endorsement. The coverage extension period will be equal to the applicable statute of limitations for any claim or "suit" for such "bodily injury" or "property damage" as provided by the controlling law of the jurisdiction where the claim or "suit" is brought or filed. However, such extension will not exceed ten (10) years from the date "your work" is completed as defined in subparagraph E. 2. of this endorsement.
2. The **LIMITS OF INSURANCE** for the policy period continue to apply and are not separate or different from, increased with respect to, or reinstated for, the extension referred to in Section F. 1. above.
3. If this policy is cancelled by you for any reason, or by us for non-payment of premium, prior to the point in time that "your work" is deemed to be complete (as described in subparagraph E. 2. of this endorsement) then the "products – completed operations hazard" extension described herein will not apply.
4. We may cancel the insurance provided by the coverage extension described herein if you fail to pay any additional premium due to us as determined by a premium audit.

- G. Paragraph 4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted and replaced by the following:

This insurance is primary and non-contributory with respect to the project shown above, unless other insurance is written specifically to apply to the same project on a primary basis, in which case this insurance will share in equal shares with that other insurance.

- H. COVERAGE C MEDICAL PAYMENTS in SECTION I COVERAGES is hereby deleted in its entirety.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 13

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

07/06/2005 10:34 AM 21997\_6059

SC 57-125 21997

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**  
**PREMIUM COMPUTATION ENDORSEMENT - DEDUCTIBLE POLICY VERSION**

1. The Deposit Premium set forth in of the Declarations is adjustable, and is only an estimated premium for the Audit Period shown below.

The final earned premium for the Audit Period shall be determined as specified in Item 5, Premium Audit of SECTION IV – Commercial General Liability Conditions. The Audit Premium shall be computed by applying the Rate of \$106.07 per each \$1,000 of the Premium Base identified in 2. below. Such Rate is net of any taxes, licenses, or fees. The final premium calculation is subject to the Minimum Retained Premium as stated in the Declarations.

2. The Premium Base shall be identified in (A) and (B) below:

(A) PREMIUM BASE

- gross "sales" excluding "aircraft products"
  - "Intercompany sales" and
  - "foreign sales".
  - "Payroll" as determined immediately below:
    - Gross Unmodified "Payroll"
    - Workers Compensation Payroll"
    - Workers Compensation Payroll" excluding:
      - (1) "Clerical Office Employees"
      - (2) "Salesmen, Collectors, Messengers"
      - (3) Drivers and their helpers if principal duties are to work on or in connection with "autos"
  - Other (Describe) CONSTRUCTION COSTS
- Estimated Exposures \$3,770,943

(B) SPECIFIC DELETIONS FROM PREMIUM BASE, IF ANY:

- Designated Products described in the following endorsements:
- Designated Operations described in the following endorsements:
- Other, described in the following endorsements

07/06/2005 10:34 AM 21997\_6059

SC 87-96-2625

3. The Audit Period is:

- Annual
- Semi-Annual
- Monthly
- Other

4. The Audit Period is measured from the Effective Date of the Insurance Policy.

All other terms and conditions of this policy remain unchanged.

Endorsement Number: 14

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

02 CGL0107 00 09 03

Page 2 of 2

07/06/2005 10:34 AM 21997\_6059

SC 87-386-23885

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****DEDUCTIBLE LIABILITY ENDORSEMENT****Schedule**

1. Specific coverages to which a deductible(s) applies and amount of deductible(s):

<u>Coverage</u>	<u>Amount of Deductible</u>
<input checked="" type="checkbox"/> All coverages.....	\$ 50,000
<input type="checkbox"/> Products/Completed Operations.....	\$ _____
<input type="checkbox"/> All coverages other than Products/Completed Application.....	\$ _____

2. The deductible applies to:

- Indemnity and Expenses  
 Indemnity Only

3. A deductible aggregate applies as follows:

- The deductible aggregate amount for all coverages, which is the maximum amount of deductible payments for which the insured is responsible, is: \$ \_\_\_\_\_. The deductible aggregate is subject to adjustment upwards based on a rate of \$ \_\_\_\_\_ per 1000 \_\_\_\_\_. Once the loss payments actually paid by us, and reimbursed by the insured to us, equals the deductible aggregate amount, the insured's deductible will be reduced to \$ \_\_\_\_\_. The estimated exposure base, at inception, is \$ \_\_\_\_\_.

(If no aggregate is shown, then there is no aggregate on the cumulative amount of deductible payments for which the insured is responsible.)

**Application of the Deductible Liability Endorsement**

The deductible(s) set forth in the Schedule apply to indemnity and expenses, (or indemnity only if the appropriate box is checked in the Schedule), on a "per occurrence" basis. The insured is responsible for payment of the deductible(s).

The insured is responsible for all payments within the deductible amount. Subject to the Limits of Liability and all other terms and conditions for this policy, our obligation to pay damages and expenses on your behalf applies only to the amount of damages and expenses in excess of the deductible amounts set forth in the Schedule. We may pay part or the entire deductible amount to effect settlement of any "claim" or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount that has been paid by us.

Our limits of liability are not increased by the presence of a deductible.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 15

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured:

Endorsement Effective Date:

01/09/2006 03:36 PM AA41D\_16898

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FILE COPY

It is understood and agreed that Endorsement 13, Construction Project Endorsement, Form #00  
CGL0110 00 08 04, Item 5. Location of Project is amended to the following:

2803 South Palm Canyon, Palm Springs, CA  
2805 South Palm Canyon, Palm Springs, CA  
2807 South Palm Canyon, Palm Springs, CA  
2809 South Palm Canyon, Palm Springs, CA  
2811 South Palm Canyon, Palm Springs, CA  
2815 South Palm Canyon, Palm Springs, CA  
2817 South Palm Canyon, Palm Springs, CA  
2819 South Palm Canyon, Palm Springs, CA  
2821 South Palm Canyon, Palm Springs, CA  
2823 South Palm Canyon, Palm Springs, CA  
2825 South Palm Canyon, Palm Springs, CA  
2827 South Palm Canyon, Palm Springs, CA  
2829 South Palm Canyon, Palm Springs, CA  
2831 South Palm Canyon, Palm Springs, CA  
2833 South Palm Canyon, Palm Springs, CA  
2835 South Palm Canyon, Palm Springs, CA

All other terms and conditions of this Policy remain unchanged.

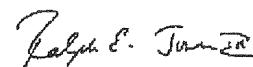
Issued By: Arch Specialty Insurance Company

Endorsement Number: 16

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC and All Contractors and Subcontractors in the Owner  
Controlled Insurance Program (OCIP)

Endorsement Effective Date: 09/15/04



President

09/18/2006 09:15 AM A7E4C\_2550

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

130 220 230 240

It is understood and agreed the Expiration Date shown in the Declarations is amended to 12/15/06.

No Additional Premium.

**APPROVED**

SEP 19 2006

Erin Bouren

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 17

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 9/15/2006

*Mark D Lyons*

President

02/12/2007 10:42 AM A7E4C\_6498

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

SC 02-12-2007

**ENDORSEMENT SUBSTITUTION**

1. Endorsement number 12, titled "Named Insured Endorsement", Form 00 CGL0072 00 03 03, is hereby deleted from this policy effective 11/07/06.
2. Endorsement number 19, titled "Named Insured Endorsement", Form 00 CGL0072 00 03 03, is hereby added to this policy effective 11/07/06.

*[Handwritten signature]*

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 18

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 11/7/2006

*Mark D. Lyons*

President

02/12/2007 10:42 AM A7E4C\_6498

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

EE 02-12-2007

**NAMED INSURED ENDORSEMENT**

It is hereby agreed that Item 1. of the Declarations is amended to include the following entities as a Named Insured:

PALM CANYON TOWNHOMES, LLC, SYMPHONY DEVELOPMENT A CALIFORNIA CORPORATION  
AND ALL CONTRACTORS AND SUBCONTRACTORS IN THE OWNER CONTROLLED INSURANCE  
PROGRAM (OCIP)

All other terms and conditions of this policy remain unchanged.

cmw3

Endorsement Number: 19

This endorsement is effective on the inception date of this policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 11/07/06

00 CGL0072 00 03 03

02/12/2007 10:42 AM A7E4C\_6498

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY 02/12/2007

It is understood and agreed the Expiration Date shown in the Declarations is amended to 01/15/07.

AMZ

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 20

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors In the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 12/15/2006

*Mark D. Lyons*  
President

02/12/2007 10:41 AM A7E4C\_6498

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ENDORSEMENT SUBSTITUTION**

1. Endorsement number 20, titled "Manuscript Endorsement", Form 00 ML0207 00 11 03, is hereby deleted from this policy effective 12/15/06.
2. Endorsement number 22, titled "Manuscript Endorsement", Form 00 ML0207 00 11 03, is hereby added to this policy effective 12/15/06.

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 21

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 12/15/06



President

02/12/2007 10:41 AM A7E4C\_6498

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

It is understood and agreed that in consideration of an additional premium of \$5,500.00, the Expiration Date shown in the Declarations is amended to 01/15/07.

The additional premium is a flat charge for the additional period of time provided by this endorsement. It is fully earned and is not subject to adjustment. It will not be credited toward the Minimum Retained Audit Premium.

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 22

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 12/15/06



President

02/12/2007 10:41 AM A7E4C\_6498

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

It is understood and agreed that in consideration of an additional premium of \$5,500.00, the Expiration Date shown in the Declarations is amended to 02/15/07.

The additional premium is a flat charge for the additional period of time provided by this endorsement. It is fully earned and is not subject to adjustment. It will not be credited toward the Minimum Retained Audit Premium.

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 23

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 1/15/2007

*Mark D. Lyons*  
President

*emj*

04/10/2007 10:52 PM F4B76\_674

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

It is understood and agreed that in consideration of an additional premium of \$5,500.00, the Expiration Date shown in the Declarations is amended to 3/15/07. *SC 094-38-12887*

The additional premium is a flat charge for the additional period of time provided by this endorsement. It is fully earned and is not subject to adjustment. It will not be credited toward the Minimum Retained Audit Premium.

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 24

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 2/15/2007

*Mark D. Lyons*  
President

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXTENSION OF EXPIRATION DATE FOR CONSTRUCTION PROJECTS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

- 1) In consideration of an additional premium of \$5,500.00, the Expiration Date shown in the Declarations is amended to 04/15/07. This additional premium is a flat charge and is not subject to adjustment. It will not be credited toward the Minimum Retained Audit Premium.
- 2) Notwithstanding anything to the contrary in the Premium Computation Endorsement or any other terms and conditions of the policy, the Minimum Retained Audit Premium shown in Item 4 of the Declarations is fully earned as of the "original Expiration Date" of this policy and is not subject to adjustment in the event of cancellation.
- 3) Subject to 1) and 2) above, the final earned premium due under this policy shall be determined by a premium audit, in accordance with the provisions of the Premium Computation Endorsement which forms a part of the Policy.
- 4) The **LIMITS OF INSURANCE** set forth in the Policy continue to apply and are not separate or different from, increased with respect to, or reinstated for, the extension provided herein.

As used in this endorsement, "original Expiration Date" means the Expiration Date shown in the Declarations at the time the policy was first issued.

All other terms and conditions of this policy remain unchanged.

Endorsement Number: 25

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

This endorsement is effective on the inception date of this policy unless otherwise stated herein:

Endorsement Effective Date: 03/15/07

02/07/2008 03:37 PM 818C8\_3458

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

It is agreed and understood Endorsement number 18 and Endorsement number 19 are deleted in their entirety.

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 26

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 11/7/2006

02/07/2008 03:37 PM

*Mark D. Lyons*

President

02/07/2008 03:37 PM 818C8\_3458

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ENDORSEMENT SUBSTITUTION**

1. Endorsement number 12, titled "Named Insured Endorsement", Form 00 CGL0072 00 03 03, is hereby deleted from this policy effective 09/15/04.
2. Endorsement number 28, titled "Named Insured Endorsement", Form 00 CGL0072 00 03 03, is hereby added to this policy effective 09/15/04.

All other terms and conditions of this Policy remain unchanged.

Issued By: Arch Specialty Insurance Company

Endorsement Number: 27

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 9/15/2004

*Mark D. Lyons*

President

02/07/2008 03:37 PM 818C8\_3458

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**NAMED INSURED ENDORSEMENT**

It is hereby agreed that Item 1. of the Declarations is amended to include the following entities as a Named Insured:

PALM CANYON TOWNHOMES, LLC, SYMPHONY DEVELOPMENT A CALIFORNIA CORPORATION  
AND ALL CONTRACTORS AND SUBCONTRACTORS IN THE OWNER CONTROLLED INSURANCE  
PROGRAM (OCIP)

All other terms and conditions of this policy remain unchanged.

Endorsement Number:28

This endorsement is effective on the inception date of this policy unless otherwise stated herein.  
~~02/07/2008 03:37 PM~~

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC, A Symphony Development, A California Corporation  
and All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 09/15/04

00 CGL0072 00 03 03

N<sup>1</sup>

02/07/2008 03:37 PM 818C8\_3458

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CANCELLATION ENDORSEMENT:  
PRODUCTS ~ COMPLETED OPERATIONS EXTENSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

In accordance with the provisions of this policy and the notice that was mailed to you, the policy period extension for "bodily injury" and "property damage" included within the "products-completed operations hazard", as set forth in paragraph F, of the Construction Project Endorsement which forms a part of this policy, is cancelled effective 10/04/07.

There is no return premium due.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number: 29

This endorsement is effective on the inception date of this policy unless otherwise stated herein.  
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: GAC 0001498 00

Named Insured: Palm Canyon Townhomes, LLC Symphony Development A California Corporation and  
All Contractors and Subcontractors in the Owner Controlled Insurance Program (OCIP)

Endorsement Effective Date: 10/04/07

## **EXHIBIT B**



Insuring Company

- |                                     |                                |
|-------------------------------------|--------------------------------|
| <input type="checkbox"/>            | Arch Insurance Company         |
| <input checked="" type="checkbox"/> | Arch Specialty Ins. Co.        |
| <input type="checkbox"/>            | Arch Excess & Surplus Ins. Co. |

## PREMIUM AUDIT ADJUSTMENT STATEMENT

Policy Number GAC000149800	Policy Period 09/15/04 - 04/15/07	Audit Period 09/15/04 - 04/15/07	Audit Type PHYSICAL
Statement Date 06/29/07	Agent's Code Number 00038	Audit Term OTHER	Audit Vendor PYRAMID
Insured	Agent		
PALM CANYON TOWNHOMES, LLC, SYMPHONY DEVELOPMENT A CALIFORNIA CORP. AND ALL CONTRACTORS & SUBCONTRACTORS IN THE OWNER CONTROLLED INSURANCE PROGRAM (OCIP) 11828 LAGRANGE AVENUE SUITE 200 LOS ANGELES, CA 90025	STERLING WEST INSURANCE SERVICES, INC. 550 N. BRAND BLVD. SUITE 1990 GLENDALE, CA 91203		

Description of Classification	Class Code	Exposure	General Liability		Surcharges	
			Rate	Premium	Rate	Premium
<b><u>GENERAL LIABILITY</u></b>						
CONSTRUCTION COSTS		5,527,484	\$ 106.07	586,300.00		
AS ENDORSED			FLAT	22,000.00		
Endorsements # 22, 23, 24 & 25						
Total Earned Premiums				608,300.00		
Deposit and/or Interim Reported Premiums				422,000.00		
Difference				186,300.00		
Additional						
Return						
Net Premium Adjustment			Additional		186,300.00	
			Return			

MG

## **EXHIBIT C**



[www.archinsurance.com](http://www.archinsurance.com)

One Liberty Plaza  
53rd Floor  
New York, NY 10006

212 651 6500 telephone  
212 651 6499 fax

July 18, 2007

Mr. Robin Robb  
Sterling West Insurance Services, Inc.  
550 N. Brand Blvd.  
Suite 1990  
Glendale, CA 91203

Re: Palm Canyon Townhomes, LLC, Symphony Development A California Corp. and  
All Contractors and Subcontractors in the Owner Controlled Insurance Program  
(OCIP)  
General Liability  
Policy Number: GAC000149800  
Policy Period: 09/15/04 – 04/15/07  
Additional Premium \$186,300.00

Dear Mr. Robin Robb:

The above captioned policy was issued on an adjustable basis and the audit has now been completed for the period 09/15/04 – 04/15/07. Please review the enclosed premium audit adjustment statement for accuracy and should you find any discrepancies, advise our office immediately.

The audit resulted in an additional premium of \$186,300.00 and our invoice reflecting this amount will follow under separate cover. Please DO NOT net this amount against other accounts and reference the invoice with your remittance.

Should you have any questions regarding the audit, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mila Francisco'.

Mila Francisco  
Premium Audit Department  
Arch Insurance Group  
(646) 563-6404 phone  
(646) 563-5730 fax  
Email: MFrancisco@archinsurance.com

Arch Specialty Insurance Company is not licensed in the state of New York and is not subject to its supervision.

## **EXHIBIT D**



[www.archinsurance.com](http://www.archinsurance.com)

One Liberty Plaza  
53rd Floor  
New York, NY 10006

T 212.651.6500  
F 212.651.6499

September 26, 2007

Palm Canyon Townhomes, LLC  
11828 LaGrange Avenue  
Suite 200  
Los Angeles, CA 90025

RE: Policy #: GAC000149800  
Policy Period: 9/15/2005 to 4/15/2007  
Outstanding Premium: \$186,300.00  
Type of Insurance Coverage: Wrap-Ups- Full Term Audit

Dear Sir or Madam,

Please be advised that the outstanding premium for the above mentioned account is now past due. Your broker, CRC- Sterling West Insurance Services, Inc., has not remitted payment on your outstanding balance, and this matter is now in our office for collections. Please pay the total amount due of \$186,300.00 to Arch Specialty Insurance Company by October 17, 2007. Payment should be sent to the following address:

Bank of America  
Arch Specialty Insurance Company  
P.O. Box 504300  
St. Louis, MO 63150-4300

Arch realizes errors and/or miscommunications may occur. If this is the case please contact me at (646)563-6246 immediately to bring any discrepancy to our attention. If the referenced premium outstanding is correct, please remit payment immediately. Arch Specialty Insurance Company appreciates your prompt attention in the resolution of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Kohlbecker".

Bryan Kohlbecker | Financial Analyst  
Arch Insurance Group  
One Liberty Plaza, 17th Floor, New York, NY 10006  
Tel: 646-563-6246 Fax (646) - 746-8106  
Email: BKohlbecker@archinsurance.com

## **EXHIBIT E**



Arch Specialty Insurance Company  
A member of Arch Insurance Group  
Administrative Office  
One Liberty Plaza, 53rd Floor  
New York, NY 10006  
Bryan Kohlbecker  
Financial Analyst  
646-563-6246

### Premium Invoice

Robin Robb  
CRC - Sterling West Insurance Services, Inc.  
550 N. Brand Boulevard  
Suite 1990  
Glendale, CA 91203

00038

Underwriter: Ken Maskell

Invoice Date: 12/11/2007

Type of Coverage: Wrap-Ups

Transaction Type: Endorsement

Policy #: GAC000149800

Policy Period: 4/15/2007 to 4/15/2007

Insured: Palm Canyon Townhomes, LLC and All Contractors and Subcon  
11828 LaGrange Avenue, Suite 200  
LOS ANGELES, CA 90025

Premium Amount: 186,300.00  
Commission @ 12.50%: 23,287.50

Method of Payment: Prepaid

Net Amount Due: 163,012.50

Due Date: 12/26/2007

Payment terms are 30 days from Policy effective date or 15 days from invoice date.

Please include a copy of this invoice with your remittance.

Remit Payment to:	Bank of America, Arch Specialty Insurance Company, P.O. Box 504300, St. Louis, MO 63150-0430	Wire Transfer Instructions:
		Bank of America, Arch Specialty Insurance Company, Account # 1003023948, ABA # 026-0005593

Arch File Copy

Arch Specialty Insurance Company is not licensed in the state of New York and is not subject to its supervision.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

**CV10- 4284 MMM (VBKx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

Western Division  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

Southern Division  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

Eastern Division  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 12/09) Summons in a Civil Action

**ORIGINAL****UNITED STATES DISTRICT COURT**

for the

Central District of California

ARCH SPECIALTY INSURANCE COMPANY

Plaintiff

v.

PALM CANYON TOWNHOMES, LLC

Defendant

**CV10 4284 MMM VBKx**

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: (Defendant's name and address) Palm Canyon Townhomes, LLC  
 11828 LaGrange Avenue, Suite 200  
 Los Angeles, CA

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*Date: JUN 10 2010**CHRISTOPHER POWERS***Signature of Clerk or Deputy Clerk*

0/0/2010 13:10:43 FAX 2132499990

NATIONWIDE LEGAL

1

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> ARCH SPECIALTY INSURANCE COMPANY		<b>DEFENDANTS</b> PALM CANYON TOWNHOMES, LLC			
(b) County of Residence of First Listed Plaintiff <u>New York</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant <u>Los Angeles, CA</u> (IN U.S. PLAINTIFF CASES ONLY)			
(c) Attorney's (Firm Name, Address, and Telephone Number)  Joseph Rimac & William Reilly, RIMAC MARTIN, 1051 Divisadero St., San Francisco, CA 94115; (415) 561-8440		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.			
		Attorneys (If Known)			
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	<input type="checkbox"/> PTF 1 <input type="checkbox"/> DEF 1 Incorporated or Principal Place of Business in This State		
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> PTF 2 <input type="checkbox"/> DEF 2 Incorporated and Principal Place of Business in Another State		
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> PTF 3 <input type="checkbox"/> DEF 3 Foreign Nation		
<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)					
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>FORUMS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights			
		<b>CIVIL RIGHTS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			
		<b>PRISONER PETITIONS</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act			
		<b>CRIMINAL PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other			
		<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157			
		<b>OTHER STATE LAWS</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes			
<b>V. ORIGIN</b> (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge		
<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  28 U.S.C. sections 1332			
		Brief description of cause: Breach of insurance Contract - Failure to Pay Premium			
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ 186,300	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions): JUDGE		DOCKET NUMBER	
DATE 06/09/2010		SIGNATURE OF ATTORNEY OF RECORD William Reilly			
FOR OFFICE USE ONLY					
RECEIPT #	AMOUNT	APPLYING IFF	JUDGE	MAG. JUDGE	

CV10 4284

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
	New York

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): /s/ William Reilly Date 6/10/10

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))